IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.694 OF 2005

Shantaben Mohan Rathod & others Petitioners

versus

International Airport Authority
of India and others Respondents

Mr.C.M.Korde, Senior Counsel with Mr.Niranjan Pandit i/by Ram Ugrah Singh for petitioners.

Mr.P.K.Samdani with Ms.Rekha Tayde i/by M.V.Kini & Co. for respondent no.1.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 05th April 2005

ORAL JUDGEMENT : (PER : GOKHALE, J.) :-

1. Heard learned counsel for both the parties.

2. Respondent no.1 to this petition is International Airport Authority of India which owns the Airport at Vile Parle, Mumbai and certain lands adjoining thereto which include amongst others an area admeasuring 11,351.1 Sq. Mtrs. divided into various survey numbers and situated near the Airport opposite Hanuman Road, Vile Parle, Mumbai. These lands have been

acquired for the benefit and expansion of Airport by taking resort to the provisions of Land Acquisition Act, 1894. Necessary notification was issued by the then Government of Bombay under section 4 of the said Act way back on 20th August 1947 followed by notification u/s 6 on 9th June 1948. This was followed by an award and execution of documents recording the taking of possession and making entries in the land records in the year 1952. Respondent no.2 is the Estate Officer of respondent no.1 appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "Public Premises Act").

3. Petitioners herein are the heirs of one Mohan Bhika Rathod, since deceased, who claimed to be in possession of these lands and who claimed that he was cultivating over there since about 1954. With a view to recover possession of these premises the respondents gave necessary notice to show cause on 11th October 2001 followed by an inquiry under the said Act and which ultimately led to an eviction order passed by respondent no.2 on 3rd August 2004. An appeal therefrom was dismissed by learned Principal Judge of City Civil Court, Mumbai by passing an order on 9th

February 2005 which is impugned in the present petition.

4. The principal submission of the petitioners is that they are in possession adverse to respondent no.1. Reliance is placed on Section 27 of the Limitation Act which provides that at the end of the period as provided under the Act, the right of any person to institute a suit for possession of any property, shall be extinguished. Article 65 provides period of limitation as 12 years and it is provided that time from which the period begins to run is when the possession of the defendant becomes adverse to the plaintiff. Various documents were relied upon by the petitioners before the Estate Officer. We are told that there are some 28 documents, though the principal one are annexed to this petition. Thus, for example reliance is placed on a notice issued by Bombay Municipal Corporation u/s 381 of the Bombay Municipal Corporations Act some time in May 1957. The notice called upon this Mr.Mohan Rathod to fill the pit in the agricultural field which was stated to be filled with stagnant water causing breeding of mosquitoes creating a nuisance. Thereafter reliance is placed on another notice

dated 18th November 1963 issued by the Bombay Municipal Corporation concerning clogging of a Nala due to fall of a tree in the concerned land and asking Mr.Rathod, the occupier to remove the tree and clear the Nala. It is submitted on behalf of petitioners that the Estate Officer did not realise the import of these document which indicated that the concerned land was in possession of petitioners from May 1957 onwards.

5. Reliance was placed on a judgement of the Apex Court in the case of Government of A.P. Vs. T.Krishnarao reported in AIR-1982-SC-1081. It was submitted that if there was a bonafide dispute regarding title of the Government to any property, the Government could not take resort to the provisions of an enactment providing for summary eviction. It was then submitted that there was a delay on the part of the Estate Officer to the tune of a year and half in passing the original order after the arguments were concluded and also that the judgement of Principal Judge of City Civil Court does not discuss the various submissions which were placed before him.

6. Mr.Samdani appearing for respondents on the

other hand drew our attention to the fact that a suit had been filed by this Mr.Rathod in the City Civil Court, Bombay against International Airport Authority bearing No.7537 of 1995. It was contended in that suit that this Mr.Rathod was in sole, exclusive, peaceful and uninterrupted use, possession and occupation of this land. The plea of adverse possession was raised in paragraphs 2 to 4 of the said plaint. The said plaintiff feared eviction and dispossession of their possession. Thus although wider relief in the nature of declaration of ownership was expected to be sought, the principal prayer of the suit was restricted only to a permanent injunction restricting respondent no.1 herein, their agents and servants from disturbing and interfering in any manner whatsoever with the possession of this Mr.Rathod over the concerned parcel of lands.

7. It is material to note that during pendency of this suit the above referred show cause notice under Public Premises Act was issued on 11th October 2001. Thereafter the suit was disposed off on 19th March 2002 without leading any evidence by Mr.Rathod. Operating order on the suit reads as follows :-

ORDER

1. Subject to the clarification made in the concluding paragraph hereof the defendants are permanently restrained from dispossessing the plaintiff from the suit premises or interfering with the possession thereof otherwise than due process of law.

2. In the event of the proceedings under the Public Premises Act finally being decided against the plaintiff, the said order be not given effect to for a period of two weeks, from its communication to the plaintiff.

3. The suit is decreed in these terms, in the circumstances no order as to costs."

8. Mr.Samdani points out that thereafter the petitioners herein appeared before the Estate Officer and then the eviction order has come to be passed. In his submission the officer concerned as well as the Principal Judge have considered the material on record. They have discarded a good number of documents including two of the Municipal Corporation on which reliance is placed by disputing the authenticity thereof. In his submission the question of title could not be raised before the Estate Officer. But in any case on the material placed before him the Estate Officer was correct in coming to the conclusion that there was no such continuous

undisturbed occupation and possession of the petitioners as claimed by them. He drew our attention to a document on which reliance was placed by the petitioner namely letter dated 25th May 1976 addressed by Airport Bhajipala Khetiwadi Mandal which is supposed to be the association of occupants of this very parcel of land. In the said letter addressed to the then Minister for Communications, in para no.2 it is specifically stated that there is a practice to invite tenders for grass cutting and growing leafy vegetables. In 1974 tender was not invited but the individual cultivators of the respective land had been asked to pay the ground lease rent and the same has been paid accordingly. In para no.1 of this letter it is stated that in the Civil Aviation land at Vile Parle, Sahar, Marol, Santazruz, the members of Mandal were cultivating and growing the leafy vegetables for generations together since about more than twenty years. Later on it is stated in para no.3 that in the year 1975-76 aforesaid practice had been stopped by the authorities and they had invited one tender for grass cutting only and growing leafy vegetables in the land and the said tender had been taken by one Mr.C.D.Singh and the Mandal was the sub-leasee of the said land and paid 12 paise per

sq.yd.. It is therefore submitted that the occupation of the petitioners was a permissive occupation, and could not be said to be hostile to the owner. Mr.Samdani submits that amongst the documents relied upon by petitioners, there is a receipt issued by the first respondent authority to the petitioners. This receipt is issued for damage charges for the conservancy etc.. Thus as far as ownership of the Airport Authority and their exercising control is concerned, that is clearly seen from the documents produced by the petitioner himself. Mr.Samdani submitted that even on facts the petitioners had no case and the impugned orders were correct.

9. Now, as can be seen from the Public Premises Act, the Inquiry Officer while resuming the land belonging to the public authority, is required to give a show cause notice calling upon the party concerned to show cause and thereafter under section 5 after considering the cause if he is satisfied that the Public Premises are in unauthorised occupation, he may make an order of eviction. That is the order passed by him and which is confirmed in the impugned order in appeal. The concept of "Unauthorised Occupation"

is defined under section 2(g) of the Act which reads thus :-

> **"unauthorised occupation"**, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever".

Thus as can be seen from this definition of ‘unauthorised occupation’ it has two parts. Firstly it means occupation by any person of the public premises without authority for such occupation. Secondly it includes continuance of such a person on the public premises after determination of his authority to occupy. In the present case the fact that such a determination has taken place and it led to the holding of inquiry is not disputed and therefore on the application of the second part of this definition there is no dispute. The submission which is sought to be raised by the petitioners is the first part of it, viz. that they are in adverse possession and therefore their occupation is not without authority. For such a plea to be taken

and to be accepted by the Estate Officer, there has got to be a prior determination to that effect. First part of the definition says that unauthorised occupation means occupation of the public premises without authority for such an occupation. Thus the person concerned must show that he has such authority, say on the basis of any such decree which he may have in his favour on the basis of adverse possession. It cannot be for the first time agitated before the Estate Officer and an order sought that on the basis of his alleged adverse possession, the officer should hold that the public premises are no longer public premises.

10. Mr.Korde, learned counsel for the petitioners submitted that under section 15 of this Act there is a bar of jurisdiction and no Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises. That is undoubtedly so but that pre-supposes that the premises are public premises and with respect to such premises the notice for eviction is issued and thereafter it is followed by necessary inquiry. A party who wants to contend that the premises are no longer

public premises cannot get such a declaration from an Estate Officer. The party has to take it from a Civil Court which alone is competent to decide it. As far as this aspect is concerned, a similar plea was sought to be raised in the Apex Court in **Anamallai Club Vs. Government of T.N.** and others reported in (1997)3-SCC-169 and in para 10 the Apex Court observed as follows :-

> "10. Shri Sorabjee contended that the appellant is entitled to notice before the order of termination of grant made and so the action is bad in law and so the appellant is entitled to restitution of the property. We are not inclined to agree with him. The recourse to Article 226 of the Constitution, to establish title would not be a proper remedy. In this case, we are not inclined to go into the question for the reason that the High Court has held that the writ petition is not maintainable. After termination of the licence by the Government under the Government Grants Act, the Estate Officer appointed under Section 3 cannot go into its correctness and adjudicate in the proceedings under Section 3 thereof. In our view, the Division Bench of the High Court is right in its finding. The Government having determined the licence, the Estate Officer cannot go into the question of legality of the termination of the licence under the Crown (Government) Grants Act to take further steps under Sections 4 and 5 of the Act ..... ."

Another judgement to the similar effect is in the case of **State of U.P. and another Vs. Zia Khan** reported in (1998)8-SCC-483. In that matter it

was pointed out by contending that the bar to a suit under section 10 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act 1972 would bar a suit to establish one's title to the land in question by a person who is facing an order of eviction. The Apex Court held that bar would not be attracted to such a suit since the question of title can be decided only by Revenue Court or Civil Court.

11. As far as judgement relied upon by the petitioners is concerned, as can be seen therefrom that the Osmania University had first filed a suit for eviction of persons concerned and having failed to get a decree therein it resorted to provisions of Public Premises Act. It is in this context that observations are made in para 7 that the persons occupying the land had a bonafide claim to litigate and they could not be evicted except by due process of law and that summary remedy prescribed in section 6 of the concerned Act was not the kind of legal process which is suited to an adjudication of complicated questions of title. In fact the proposition runs adverse to the petitioners.

12. That apart in the instant case the

petitioners had filed a suit and in the suit though they raised various pleas based on their alleged adverse possession, yet they confined their prayers only to injunction and did not seek any declaration of their claimed ownership which they ought to have sought. This being the position, such a prayer once given up by not seeking it, could not be permitted to be raised at a later point of time even on the basis of provisions of Order II, Rule 2 of Code of Civil Procedure.

13. We have seen the facts as well, and assuming that such a plea could be raised before the Estate Officer, even on facts we are satisfied that the petitioners had failed to make out any case that they were in adverse possession as claimed by them. This is because adverse possession will require peaceful, continuous and unobstructed possession hostile to the owner. The documents on record do not make out such case. The possession has to be hostile to the owner whereas in the present case we find that the petitioners were paying the amounts as required by the authorities. In view of what is stated above, we do not find any merit in the petition. Petition stands dismissed. No order

as to costs.

14. Mr.Korde applies for continuation of stay to file an Special Leave Petition. Mr.Samdani opposes the request. We have already held that the petitioners have no case, yet with a view not to deny an opportunity, the stay granted by the Lower Court will continue for a period of six weeks hereafter.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)